

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION

In Re:

James A Batson and Ann
Elizabeth Darling-Batson, *Debtors*

Case No. 20-40287

First Southern Bank fka
Bank of Marion, *Creditor*

Chapter 7

vs.

James A Batson and Ann
Elizabeth Darling-Batson, *Debtors*

Honorable Laura K. Grandy

Internal Revenue Service, *Creditor*

and

Waive 30 Day Hearing

Dana S. Frazier *Trustee*

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

NOW COMES First Southern Bank fka Bank of Marion ("Movant"), by and through its attorneys, Heavner, Beyers & Mihlar, LLC, and hereby moves this Court for an entry of an order for relief from the automatic stay, pursuant to 11 U.S.C. §362, with respect to certain real property of the Debtors having an address of 303 Forest Park Drive, Herrin, Illinois 62948 ("Property"). The Required Statement is attached hereto as Exhibit "A", in accordance with Local Rule 4001-2(B)(1). In further support of this Motion, Movant respectfully states:

1. Debtors filed a petition under Chapter 7 of the United States Bankruptcy Code on May 1, 2020.

2. The Debtors have executed and delivered or are otherwise obligated with respect to a Note in the original principal amount of \$140,000.00 ("Note"). Movant is an entity entitled to enforce the Note.

3. Movant is a secured creditor by virtue of a Note secured by a Mortgage on the Property commonly known as 303 Forest Park Drive, Herrin, Illinois 62948.

4. Said Mortgage was recorded on October 14, 2015, in the Recorder's Office of Williamson County, Illinois, as Document Number 2015-00008278 ("Mortgage"). A copy of the Note and Mortgage are attached hereto and made a part hereof as Exhibit "B" and Exhibit "C", respectively.

5. The Debtors are the owners or occupants of said Property and said Property was included in the Debtors' Bankruptcy Petition. Said Property is the Debtors' principal residence.

6. Dana S. Frazier is the Trustee duly appointed by law.

7. The following has a legal or equitable interest in the Property: Internal Revenue Service.

8. As of May 6, 2020, the outstanding amount of the Debtors' obligation under the Note is \$126,337.32.

9. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested herein, Movant has also incurred attorneys' fees of \$950.00 and costs of \$181.00. Movant reserves all rights to seek an award or allowance of such fees and expenses in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

10. The estimated market value of the property is \$180,000.00. The basis for such valuation is the Debtors' Schedules.

11. The payoff of the additional lien on said Property is estimated to be \$111,537.00. The basis for such estimation is the Debtors' Schedules.

12. Upon information and belief, the aggregate amount of encumbrances on the Property listed in the Schedules or otherwise known, including but not limited to the encumbrances granted to Movant, is \$237,874.32.

13. Pursuant to 11 U.S.C. §362(d), cause exists to grant Movant relief from the automatic stay for the following reasons:

A. Movant's interest in the Property is not adequately protected as there is a continuing daily increase in the total amount outstanding and chargeable against said Property for interest and costs due under the Note and Mortgage.

B. The Debtors filed a Statement of Intention that indicates the Debtors intend to surrender the Property.

WHEREFORE, Movant prays that this court enter an order terminating or modifying the automatic stay and granting the following:

1. Relief from the Stay allowing Movant, its successors and assignees, to proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

2. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other Chapter of Title 11 of the United States Code.

3. The 14 day stay described by Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

4. For such other relief as the court deems proper.

First Southern Bank fka Bank of Marion,

By: /s/ Pinju Chiu
Pinju Chiu
One of its attorneys

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This advice pertains to your dealings with our firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the motion. The advice in this notice also does affect our relations with the court. As attorneys, we may file papers in the suit according to the court's rules and the judge's instructions.

NOTICE PURSUANT TO THE FAIR DEBT COLLECTION

PRACTICES ACT

15 U.S.C. Section 1601 as Amended

1. The amount of the debt is stated in the motion attached hereto.
2. The movant named in the attached motion is the creditor to whom the debt is owed or is the servicing agent for the creditor to whom the debt is owed.
3. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume the debt is valid.
4. If you notify this office in writing within 30 days after receiving this notice, this office will obtain verification of the debt and mail you a copy of such verification.
5. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.
6. Nothing in this notice should be construed as an agreement by the movant to extend or stay any time periods established by law with respect to the litigation, which is the subject of the attached motion.
7. Written requests should be addressed to Heavner, Beyers & Mihlar, LLC, 111 East Main Street, Decatur, IL 62523.
8. Please be advised that this is an attempt to collect a debt. Any information obtained will be used for that purpose.